

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1309 OF 2002

Rajendra Narsingrao Guttikonda)
Age 37 years, Occ: Nil,)
R/at 9/A, Begampeth,)
Near Laxmi Mandai, Solapur)
(Presently in Yerwada Central)
Jail, Pune.))...Appellant.
(Orig. Accused)

V/s

The State of Maharashtra)...Respondent.

Mr. Abhaykumar Apte for the appellant.

Mr. D.P. Adsule, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 13th September, 2004.

ORAL JUDGMENT:

1. Heard the learned Counsel appearing on behalf of the appellant and the learned APP appearing on behalf of the respondent - State.

2. Appellant is challenging the judgment and order dated 31/8/2002 passed by the 9th Assistant Sessions Judge, Pune in Sessions Case No. 124 of 2002 whereby the appellant was convicted for the offence punishable under section 307 IPC and sentenced to suffer R.I. for five years and to pay fine of Rs 1000/- and in default to suffer S.I. for three months.

3. Prosecution's case is that the complainant viz. Nirmala Girish Marpalli was residing at Bhosari along with her husband. His sister was married to the accused Rajendra Guttikonda. She was leaving with her parents as the accused was unemployed. The incident in question took place on 21/10/2001. The complainant and her husband went to sleep after dinner at about .2.30 a.m. when somebody rang the door bell. The complainant opened the door bell and noticed that Tanuja's husband - accused was at the door and, therefore, she took him inside the house. Her husband also, in the mean time, got up and she gave a glass of water to the accused and inquired whether he would like to have tea. However the accused refused and, thereafter, her husband and accused were talking with each other in the room and, therefore, she slept inside the kitchen. Some time at about 3.30 a.m., she heard some noise in the drawing room and she went out to see what was happening. She noticed that the accused was assaulting her husband on his head with an axe. When she tried to intervene, the accused assaulted her also. Because of the hue and cry raised by her, residents of the building also got up. The accused ran out with an axe and the residents of the building chased him. The complainant and her husband

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were admitted in the Y.C.M. Hospital. Her statement was recorded. Statement of the husband of the complainant was recorded subsequently as, at that time, he was injured seriously. An axe was seized so also the clothes of the accused were seized under panchanama. The accused was charged under section 307 of the Indian Penal Code.

4. Prosecution examined in all 9 witnesses. The Trial Court convicted the accused under section 307 and sentenced him to undergo R.I. for five years.

5. The learned Counsel appearing on behalf of the accused vehemently submitted that the recovery of an axe which was made at the instance of the accused could not be relied upon as the said axe was obviously planted because the Chemical Analyser's report does not indicate that blood stains of both, the accused and the complainant's husband were found on the axe. Further, it is submitted that no witnesses were examined to prove that the accused had carried an axe from Solapur. It is further submitted that the Investigating Officer has given contrary version regarding recovery of an axe. He further submitted that the Trial Court had not considered that the seized articles were sent to the Forensic Laboratory

after a lapse of 53 days and the delay has not been mentioned by the prosecution during the trial. It is further submitted that the Doctors who were examined by the prosecution have not stated whether P.W. 1 and 2 had given them history of assault at the instance of the appellant. The learned Counsel also submitted that so far as the blood samples of the accused are concerned, they were taken at the Hospital. However, there was no panch witness examined to corroborate the version of the Investigating Officer. It is further submitted that the prosecution has also failed to examine witnesses who had chased the accused on the road before apprehending him except P.W.4. - Subhash Karmarkar and, therefore, it is submitted that the story of the prosecution was false.

6. The learned APP appearing on behalf of the respondent - State vehemently opposed the said submissions made by the learned Counsel appearing on behalf of the appellant - accused. He submitted that P.W.1 and 2 were both injured in the said incident and had categorically deposed that the accused had assaulted them with an axe. The evidence of P.W.1 and 2 is corroborated by each other and it is further corroborated by the medical evidence. The recovery panchanama also has been proved.

7. Prosecution has examined in all 9 witnesses out of which P.W.1 - Nirmala Girish Marpalli and P.W.2 - Girish Anand Marpalli are the eye witnesses who have witnessed the said incident and were personally and grievously injured and had luckily survived the said assault. Apart from P.W.1 and 2 who are eye witnesses. P.W.4 - Subhash Karmarkar who is the neighbour of the complainant had further stated that he had chased the accused from the house of the complainant. The medical evidence also clearly corroborates the ocular evidence. Prosecution has examined Dr. Dattatraya Vankhade - P.W. 5 and Dr. Pravin Jain - P.W.9 who had stated the injuries which were inflicted by the accused on the eye witnesses P.W.1 and P.W.2. Apart from this evidence, prosecution has also examined panch witnesses regarding seizure panchanama of the blood stained mosquito net, pillow covers, blanket of the accused as also pertaining to seizure of clothes of P.W.1 and P.W.2.

8. Looking to the entire evidence adduced by the prosecution, in my view, the prosecution has proved beyond reasonable doubt that the accused had assaulted the complainant and her husband. The Trial Court has

given cogent reasons while coming to the conclusion that the accused was guilty of committing the said crime.

9. So far as the sentence is concerned, the Trial Court has sentenced the accused to suffer R.I. for a period of 5 years and to pay fine of Rs 1,000/- and in default to suffer S.I. for three months. The accused is in jail since 24/10/2001 and he has already undergone four years of sentence. The incident in question appears to have taken place at the spur of the moment as it is not proved that the accused had brought an axe alongwith him to the house of the complainant. The accused was also injured and was admitted in the hospital. It has been stated by P.W.1 in her evidence that the relations of the complainant, her husband and accused were cordial in the past except on the date of incident. Neither the complainant nor the P.W.2 - her husband has stated or has given exactly the reason when and why the quarrel started. In view of these circumstances, I am of the view that the accused is entitled to be released on the sentence which he has already undergone. Under the circumstances conviction of the accused is confirmed. Sentence, however, is reduced from 5 years to the one which the accused had already undergone.

10. In the result the following order is passed:-

O R D E R

. The accused is entitled to be released on the sentence which he has already undergone. Under the circumstances, conviction is confirmed. Sentence, however, is reduced from 5 years to the one which the accused has already undergone. Accused to be released forthwith unless he is otherwise required in any other case.

V.M.KANADE, J.